

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PANTRANCO NORTH EXPRESS, INC.,
*Petitioner,***

-versus-

**.R. No. L-64152
December 29, 1983**

**NATIONAL LABOR RELATIONS
COMMISSION, FRANCISCO COSTALES
and PANTRANCO EMPLOYEES
ASSOCIATION-PTGWO,
*Respondents.***

X-----X

**FRANCISCO COSTALES and
PANTRANCO EMPLOYEES
ASSOCIATION-PTGWO,
*Petitioners,***

-versus-

**G.R. No. L-64249
December 29, 1983**

**NATIONAL LABOR RELATIONS
COMMISSION and PANTRANCO
NORTH EXPRESS, INC.,
*Respondents.***

X-----X

DECISION

GUTIERREZ, JR., J.:

These two Petitions for Certiorari with Preliminary Injunction are taken up jointly as they involve the same parties and arise from the same causes.

G.R. No. 64152 is a petition for certiorari with preliminary injunction seeking to annul the resolution of respondent National Labor Relations Commission dated April 29, 1983 affirming the resolution of Labor Arbiter Teodorico L. Dogelio which ordered the petitioner transportation company to reinstate private respondent Francisco Costales to his position as driver of an airconditioned bus without loss of seniority rights. The NLRC also affirmed the payment of backwages at P2,000.00 per month from November, 1980 to October 21, 1982 and of such other benefits provided by the collective bargaining agreement including leave privileges and P3.00 general increase for the period but deleted the award of P50,000.00 for moral and actual damages.

G.R. No. 64249 is a petition for certiorari filed by Costales which seeks to annul the portion of the same resolution of respondent National Labor Relations Commission deleting the award of moral and actual damages in the amount of P50,000.00.

We have decided to give due course to the interrelated petitions, treat the respondents' comments as answers, and consider the cases submitted for decision without requiring the filing of briefs or memoranda.

Francisco Costales was employed as bus driver on March 16, 1971 by Pantranco North Express, Inc. In 1979, he was assigned to drive one of Pantranco's airconditioned passenger buses at the higher compensation of more than P2,000.00 a month on commission basis.

On October 22, 1980, Costales was suspended for fourteen (14) days on account of his violation of company rules and regulations. After

the 14-day suspension, he reported for work but was told that he would be driving an ordinary passenger bus, Costales asked for a reconsideration of the order but this was denied.

Consequently, Costales filed a complaint with the Ministry of Labor and Employment for “Illegal Suspension and Demotion/Reduction of Wages” docketed as NCR Case No. AB-11-9097-80 entitled “Francisco Costales vs. Pantranco North Express, Inc.” On December 18, 1981, Labor Arbiter Cornelio Linsangan dismissed the complaint holding that the penalty of suspension for fourteen (14) days and transfer from an airconditioned bus to a non-airconditioned bus imposed upon complainant Costales is just and reasonable. Costales appealed to the National Labor Relations Commission. On December 28, 1982, the National Labor Relations Commission referred the case back to the parties for proper disposition under the grievance machinery of their collective bargaining agreement.

Under these circumstances, Costales and the Pantranco Employees Association (PTGWO) on August 6, 1982 filed another complaint for “Illegal Dismissal, Backwages, Reinstatement, Benefits, Damages and Attorney’s fees with legal interest” against Pantranco docketed as NCR Case No. 85218-82.

The complaint for illegal dismissal was set for hearing on August 31, 1982 before Labor Arbiter Teodorico L. Dogelio. However, the complainant requested for a re-setting to enable them to file a position paper. Pantranco was given up to October 12, 1982 to file its position paper and thereafter the Labor Arbiter gave the parties up to October 22, 1982 within which to file all subsequent pleadings. Pantranco failed to file its position paper on October 12, 1982.

On October 21, 1982, Labor Arbiter Teodorico L. Dogelio rendered his decision, the dispositive portion of which states:

“WHEREFORE, judgment is hereby rendered:

- “(a) ordering respondent to reinstate complainant to his position as bus driver in the air conditioned bus, without loss of seniority rights, with backwages from November, 1980 up to the date of this

Resolution, on the basis of P2,000.00 per month, his average commission;

- “(b) ordering respondent to pay complainant such other benefits provided for under the CBA, including leave privileges and the P3.00 general wage increase for the period;
- “(c) ordering respondent to pay complainant the sum of P50,000.00 representing actual and moral damages; and
- “(d) dismissing the claims for cost of living allowance (COLA), 13th month pay, holiday and rest day pay considering complainant Costales’ average monthly earning and of being paid on commission basis.”

On October 29, 1982, Pantranco appealed to the National Labor Relations Commission. On April 29, 1983, respondent NLRC rendered a decision affirming the decision of the labor arbiter but deleting therefrom the award of P50,000.00 for actual and moral damages.

Pantranco maintains that Francisco Costales filed two different cases. The first on November, 1980 docketed as NCR Case No. AB-11-9097-80 entitled “Francisco Costales vs. Pantranco North Express, Inc.”, and the other on August, 1982, docketed as NCR Case No. 8-5218-82 entitled “Francisco Costales and Pantranco Employees Association-PTGWO vs. Pantranco North Express, Inc.” To sustain its arguments of res judicata, it argues that in both cases, the subject matter is the same, i.e., the incident of October 22, 1980, which caused Costales’ demotion and suspension, and likewise in both cases, his causes of action are the same, i.e., his alleged termination from employment. Contending that the decision of the NLRC in the first case on December 28, 1982, has already become final, Pantranco states that the decision of the NLRC in the second case was over a moot and academic issue.

Costales on the other hand argues that the resolution of respondent NLRC dated December 28, 1982 issued in connection with the first

complaint and which set aside the appeal and referred the case back to the parties for proper disposition under the CBA grievance machinery was not a final order or judgment on the merits. He states that the second complaint docketed as NCR Case No. 8-5218-82 was for illegal dismissal and damages whereas the first complaint did not really question his dismissal as he had not yet been terminated in his employment, hence, the subject matter and the cause of action of the two complaints are not the same.

There is merit in the above contentions of Mr. Costales.

Under Rule 39 Section 49(b) of the Revised Rules of Court, the settled rule has long been that for res judicata to apply: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and the second actions, identity of parties, of subject-matter, and of cause of action. (Alejandrino vs. Cardona, 70 Phil. 281).

It appears quite clear that the issues raised in the second complaint were not resolved by the first complaint for illegal suspension and demotion/reduction of wages filed by Costales. While there is identity of parties in both the first and second complaints, there is a great deal of difference in their causes of action. In NCR Case No. AB-11-9097-80, the cause of action is the unlawful suspension and demotion of Costales while in NCR Case No. 8-5218-82, the cause of action is his unlawful dismissal. Suspension and demotion are different from dismissal. Moreover, the decision in the first complaint when appealed to the NLRC was referred back to the parties for proper disposition under the grievance procedure in their CBA. There was no judgment on the merits.

Pantranco further argues that it was denied due process when despite the parties' agreement to submit their respective pleadings on October 22, 1982, the labor arbiter rendered his decision on October 21, 1982, or one day before the deadline for the submission of the parties' pleadings without any evidence on the part of the petitioner transportation company.

Costales on the other hand submits that the petitioner was notified of the scheduled hearings and was present when they were conducted and if the decision was rendered without Pantranco's evidence, the fault was Pantranco's own failure to comply with a legitimate order of the labor arbiter.

The due process argument of Pantranco is not sustained by the evidence. The records show that the complaint for illegal dismissal in NCR Case No. 8-5218-82 was set for initial hearing on August 31, 1982 with notice that the parties should submit their respective position papers and supporting affidavits at least three (3) days before the scheduled hearing. The counsel for Pantranco appeared on August 31, 1982 but did not submit any position paper. The case was reset for hearing to September 13, 1982 at which date the complainants submitted their position paper but the case was again reset to September 23 because Pantranco had not as yet submitted its position paper. On September 23, 1982 Costales and the union submitted their supplemental position paper. The affidavit of Costales was submitted as his direct testimony in support of the complaint for illegal dismissal but again Pantranco did not submit its position paper thus prompting the labor arbiter to consider the case deemed submitted for resolution on the basis of evidence on record. On the same date, the labor arbiter allowed Pantranco another opportunity to be heard when he gave another fifteen (15) days for the submission of the position paper. Pantranco failed to submit any pleading by October 12, 1982 when the period expired.

The records show that the labor arbiter observed the cardinal rules of administrative due process. Pantranco was duly represented by counsel and was given sufficient opportunity to be heard and to present its evidence.

The next question refers to the amount of backwages which may be awarded to Costales considering all the background circumstances of this case. We find that Costales is not entirely without fault. As found by NLRC there is no proof that Pantranco acted with malice or bad faith. In the first complaint for illegal suspension, demotion, and reduction of wages, the labor arbiter dismissed the complaint of Costales with a ruling that the penalty of suspension and a transfer from airconditioned buses to regular buses was just and reasonable.

This finding was not reversed on appeal. The NLRC remanded the case to the parties on a showing that the grievance machinery under the collective bargaining agreement had not been followed.

The decision of the labor arbiter in Case No. AB-11-9097-80 shows that Costales was caught by an inspector re-issuing a used ticket and falsifying four passenger tickets. The evidence was found overwhelming against Costales. This decision was set aside not because of any doubts regarding the factual findings but because prior resort to the grievance machinery in the CBA was a jurisdictional requirement.

It, therefore, appears that Pantranco was at fault when it ignored the provisions of the CBA grievance procedures and was negligent or inattentive when the second case was being heard by the labor arbiter. Equitable considerations, however, dictate that the decision of Labor Arbiter Dogelio should not be upheld in all its dispositions. Costales was not a victim of arbitrary and high handed action. An award of one (1) year backwages is the most that appears to be just and reasonable under the circumstances of this case.

WHEREFORE, the resolutions of the labor arbiter as well as that of the respondent Commission in G.R. No. 64152 are **MODIFIED** insofar as the payment of backwages is concerned and the petitioner is ordered to pay private respondent his corresponding backwages for a period of one (1) year to be computed on the basis of his rate of earnings from January to November, 1980 without qualification and deduction. The questioned resolution of the respondent Commission is affirmed in all other respects.

The petition in G.R. No. 64249 is **DISMISSED** for lack of merit.

SO ORDERED.

Teehankee, J., Chairman, Melencio-Herrera, Plana and Relova, JJ., concur.